

Remarks

Upon entry of the foregoing amendment, claims 2-9, 11-12, 24-27, 29-30, 35-46 are pending in the application, with claims 25, 35 and 39 being the independent claims. No claims are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. New claims 43-46 is sought to be added, and claims 9, 29, 35, and 39 and 40 have been amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Applicants thank the Examiner for taking the time to personally meet with Applicants' representatives on July 12, 2005. During the interview, the Examiner commented favorably Applicants' proposal to amend claim 35 as presented herein, as distinguishing the art of record.

Accordingly, to clarify the scope of the claimed subject matter, Applicants have amended claims 35 and 39 and added new dependent claims 43-46. Applicants submit that the amendments presented herein place the present application in condition for allowance, which is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 102

Claims 2, 5-9, 11-12, 24, 35 and 42 have been rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,014,449 to Richard et al. ("Richard").

Independent claim 35 calls for, *inter alia*, a sidewall including plurality of stepped ridges, wherein each stepped ridge comprises at least one wall substantially perpendicular to

the top wall. On the other hand, Richard teaches "convolutions 22" that are "formed by oppositely angled surfaces 23,23' which create a bellows-like structure allowing intermediate layer 12 to compress in an accordion-like fashion when force is applied to upper surface or to lower surface 16." Col. 5, lines 22-26 of Richard (emphasis added). The accordion-like convolutions having angled surfaces of Richard do not include at least one wall substantially perpendicular to the top wall of the chamber of Richard. The present invention specifically distinguishes between the accordion-like convolutions taught by Richard having angled surfaces, i.e., V- or W-shaped walls, and the stepped ridges that are claimed having at least one wall, or section, that is substantially perpendicular to the top wall, e.g., as shown in Figures 4 and 13. See paragraph [0065] of the specification as filed or paragraph [0068] in U.S. Published Application No. 2004/0261293. As such, Richard does not anticipate amended claim 35.

Applicants are aware of no art that would be properly combinable with Richard to teach the claimed invention. Applicants submit herewith an Information Disclosure Statement including several references that were submitted either in an Information Disclosure statement in a child application that became Design Patent No. Des. 495,127 or were asserted against the Design Patent in a pending litigation in the U.S. District Court for the District of Massachusetts (Reebok International Ltd. v. Wal-Mart, Civil Action No. 04-12668). However, none of these references alone or in combination teach the claimed invention, specifically a container having a top wall having a first perimeter, a bottom wall having a second perimeter and a sidewall extending from around the first perimeter to around the second perimeter defining an enclosed space, wherein the sidewall includes a plurality of

stepped ridges, wherein each stepped ridge comprises at least one wall substantially perpendicular to said top wall and a foam core disposed within the enclosed space.

As such, claim 35 is patentable and allowance is respectfully requested. Further, claims 2, 5-9, 11-12, 24 and 42 depend from and add further limitations to independent claim 35 and are patentable for at least the reasons discussed herein with respect to independent claim 35.

Claims 29, 39 and 42 have been rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,235,715 to Donzis ("Donzis").

Independent claim 39 calls for, *inter alia*, a container enclosing a foam core with a plurality of compartments and at least one channel fluidly connecting the plurality of compartments jointly defined by said foam core and one of a top wall and a bottom wall of the container. Donzis does not teach a container having a foam core with a plurality of compartments and at least one channel fluidly connecting the plurality of compartments jointly defined by the foam core and a top wall or bottom wall of the container. Considering aperture 88/97 is closed off by a pressure adjustment valve 16, Donzis does not teach any compartments or channels defined by a foam core and a top or bottom wall of a container and certainly does not teach a plurality of compartments defined by a foam core and a top or bottom wall of a container. (See Donzis, col. 8, lines 44-46 and 57-61.) As such, Donzis does not anticipate claim 39. Further, claim 29 depends from and adds further limitations to independent claim 39 and is patentable for at least the reasons discussed herein with respect to independent claim 39.

As discussed above, claim 35 as amended calls for a sidewall including a plurality of stepped ridges, wherein each stepped ridge comprises at least one wall substantially

perpendicular to the top wall. Donzis does not disclose a sidewall including a plurality of stepped ridges, wherein each stepped ridge comprises at least one wall substantially perpendicular to the top wall. For at least this reason, claims 35 and 42, which depends from and adds features to claim 35, are patentable.

Withdrawal of these 35 U.S.C. § 102(b) rejections is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 3 and 4 have been rejected under 35 U.S.C. § 103(a) as being obvious over Richard. Claims 29, 30 and 36-41 have also been rejected under 35 U.S.C. § 103(a) as obvious over Richard in view of Donzis and Donzis in view of Richard.

Claims 3, 4 and 36-38 depend from and add further limitations to independent claim 35 and are patentable for at least the reasons discussed herein with respect to independent claim 35.

As discussed above, independent claim 39 calls for a container enclosing a foam core with a plurality of compartments and at least one channel fluidly connecting the plurality of compartments jointly defined by the foam core and one of a top wall and a bottom wall of the container. Donzis, either alone or in combination with Richard, does not teach the claimed invention, in that neither Donzis nor Richard teaches a container enclosing a foam core with a plurality of compartments and at least one channel fluidly connecting the plurality of compartments jointly defined by the foam core and one of a top wall and a bottom wall of the container. None of the art of record, either alone or in combination, teaches the invention as claimed in claim 39. As such, claim 39 is patentable. Further, claims 29, 30, 40 and 41 depend from and add further limitations to independent claim 39 and are patentable for at least the reasons discussed herein with respect to independent claim 39.

Allowable Subject Matter

Claims 25-27 have been allowed. Applicants appreciate the Examiner's acknowledgement of the allowance of claims 25-27.

New Claims

New claims 43-45 depend from and add further limitations to independent claim 35 and are patentable for at least the reasons discussed herein with respect to independent claim 35. New claim 46 depends from and adds further limitations to independent claim 39 and is patentable for at least the reasons discussed herein with respect to independent claim 39.

Conclusion

Prompt and favorable consideration of this Amendment and Reply is respectfully requested. Applicants believe the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

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